

Appl. No. 09/786,080
Atty. Docket No. CM1905Q
Amdt. dated June 24, 2004
Reply to Office Action of April 27, 2004
Customer No. 27752

REMARKS

Claims 1 - 17 are pending in the present application.

Rejection Under 35 USC 103(a) Over Wada et al. in view of Thompson

The Final Office Action rejects claims 1-17 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Pat. No. 5,746,729 issued to Wada et. al in view of U.S. Pat. No. 3,929,135 issued to Thompson. Applicant respectfully traverses the rejection by the Final Office Action because the Final Office Action fails to establish a *prima facie* case of obviousness.

In order to establish a *prima facie* case of obviousness, three requirements must be met. MPEP §2143. First, there must be some suggestion or motivation, either in the cited references or in the knowledge generally available to one ordinarily skilled in the art, to modify the reference. *Id.* Second, there must be some reasonable expectation of success. *Id.* Third, the cited references must teach or suggest all of the claim limitations. *Id.* The Office Action fails to establish a *prima facie* case of obviousness because there is no motivation to combine the cited references, and the cited combination fails to teach or suggest all of the limitations of the claimed invention.

The Final Office Action fails to establish a *prima facie* case of obviousness because there is no motivation to combine the cited references. "It is improper to combine references where the references teach away from their combination." MPEP § 2145 X. D. 2. *citing In re Grasselli*, 713 F.2d 731, 743 (Fed. Cir. 1983). A reference may be said to teach away "if it suggests that the line of development flowing from the reference's disclosure is unlikely to be productive of the result sought by the applicant." *In re Gurley*, 27 F.3d 551, 553, 31 USPQ2d 1130, 1131 (Fed. Cir. 1994).

The Final Office Action improperly combined the Wada et. al and Thompson references because the Thompson reference teaches away from the suggested combination. The Wada et. al reference teaches a sanitary napkin having an upper layer 11 and a lower layer 13. (col. 2, lines 11-14). The Wada et. al reference further teaches that the upper layer 11 may be a nonwoven fabric. (col. 2, lines 36-38). The Office Action refers to the upper layer 11 as a nonwoven web in several instances in order to satisfy the claim limitation of a nonwoven web as recited, in part, in claims 1 and 12. (See page 2, paragraph 3).

In contrast, the Thompson reference teaches a topsheet having apertures therein. (col. 2, lines 23-39). However, the Thompson reference does not teach the use of nonwovens and instead teaches

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against their use. For example the Thompson reference teaches that when the usual nonwoven topsheet is used with a disposable diaper, the permissible loading of the absorptive pad "is somewhat higher than that which is acceptable." (col. 5, lines 9-13). In addition, the Thompson reference utilizes, in Example 1, a topsheet which is a liquid impervious ionomer film. (col. 6, lines 60-62). Similarly, the Thompson reference utilizes, in Example 3, a topsheet which is a low density polyethylene film. (col. 7, lines 16-18). Last, regarding Example 3, the Thompson reference states that the low density polyethylene film "was used in the construction of a disposable diaper" and "the disposable diaper exhibited a drier, more comfortable surface in contact with the infant than can be obtained with a conventional hydrophobic nonwoven topsheet." (col. 7, lines 22-29)(emphasis added). Thus, the Thompson reference teaches away from the utilization of a nonwoven, thereby discouraging the combination proposed by the Final Office Action.

In addition, assuming *arguendo* that there was motivation to combine the cited references, the cited combination does not teach or suggest all of the claim limitations of the claimed invention. Claim 1 recites, *inter alia*, a nonwoven web comprising a first zone and a second zone each having bonded areas wherein "the bonded area of said second zone" is "greater than the bonded area of said first zone." Similarly, independent claim 12 recites, *inter alia*, "[a] method of forming a bonded nonwoven web... comprising the steps of... bonding the web in at least one second or outer zone with a bonded area greater than the bonded area of the central zone." The specification provides that the nonwoven web 40 "comprises a fibrous material formed from fusible polymeric fibers or filaments," and that the "bonded areas are comprised of many individual bonds." (page 7, lines 27-32). Thus, the bonded area of the claimed invention refers to the bonds between the fibers or filaments which make up the nonwoven web.

The Office Action states that:

Wada discloses a nonwoven web 11, as described in column 2, lines 37-39, comprising a first zone 6 and a second zone 7, each having a bonded area comprising bonds 15, as shown in figure 3. The bonded area of the second zone 7 is greater than that of the first zone 6, as shown in figure 1.

(Office Action page 2, 2nd paragraph).

However, the Wada et. al reference teaches that the "upper and lower layers are bonded together at intermittent heat-sealing spots 15 formed by thermal embossing of the surrounding zone 7." (col. 2, lines 15-18). The first zone 6 and the second zone 7 are formed by the thermal embossing of the upper layer 11 to the lower layer 13. (See col. 2, lines 17-21). The Wada et. al reference does not teach or suggest that the nonwoven fabric 11 independently has either a first zone 6 or a second zone 7 or an outer and a central zone when not thermally embossed to the lower layer 13.

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Similarly, the Thompson reference does not teach a nonwoven web which has a first zone and a second zone or an outer zone and a central zone. Thus, the suggested combination fails to teach or suggest all of the claim limitations of claims 1 and 12.

Because there is no motivation to combine the suggested references and because the suggested combination of references fails to teach all of the claim limitations of claims 1 and 12, the Final Office Action fails to establish a *prima facie* case of obviousness. Thus claims 1 and 12 are nonobvious over the cited combination. Moreover, because claims 2-11 and 13-17 depend from claims 1 and 12 respectively, they too are nonobvious over the cited combination of references.

Conclusion

In light of the above remarks, it is requested that the Examiner reconsider and withdraw the rejection under 35 U.S.C. § 103(a). Early and favorable action in the case is respectfully requested.

Applicant has made an earnest effort to place his application in proper form and to distinguish the invention as now claimed from the applied references. In view of the foregoing, Applicant respectfully requests reconsideration of this application and allowance of Claims 1-17.

Respectfully submitted,

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